

2-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and on timely application of the judgment creditor, including an affidavit from the judgment creditor that the judgment creditor has made reasonable investigation and has no knowledge that the judgment debtor owns property within the state subject to execution, the clerk of the court shall issue a writ of garnishment.

B. **Judgments for medical debt.** If the judgment for which a writ of garnishment is sought is a judgment for medical debt as defined in the Patients' Debt Collection Protection Act, NMSA 1978, Section 57-32-2(I), the application for the writ shall comply with Form 4-805B NMRA.

~~[B.]~~ **C. Service of writ of garnishment.** Within thirty (30) days of its issuance, a writ of garnishment issued under this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 2-202 NMRA for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be sent to the judgment debtor's last known address, and, if counsel remains of record in the proceeding, to the last known address of the judgment debtor's counsel. A separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.

~~[C.]~~ **D. Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

~~[D.]~~ **E. Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by NMSA 1978, Section 35-12-4 ~~[NMSA 1978]~~.

~~[E.]~~ **F. Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

~~[F.]~~ **G. Service on judgment debtor by garnishee.** On or before the fourth business day after service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor under Paragraph ~~[G.]~~ **D** of this rule.

~~[G.]~~ **H. Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

~~[H.]~~ **I. Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form on the judgment creditor and the garnishee in the manner provided by Rule 2-203 NMRA.

1 ~~[I.]~~ J. **Failure to file claim of exemption other than wages.** If the judgment debtor fails
2 to file a claim of exemption within ten (10) days after service of the notice of the right to claim
3 exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory
4 exemption other than wages. Notwithstanding the foregoing, for actions filed on or after July 1,
5 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two
6 thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall
7 any failure to assert a claim of exemption constitute waiver of any protections for Unemployment
8 Compensation under NMSA 1978, Section 51-1-37 ~~[NMSA 1978]~~.

9 ~~[J.]~~ K. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a
10 claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice
11 of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of
12 dispute and request for hearing within the time permitted, the judgment debtor's claim of
13 exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall
14 at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on
15 the judgment debtor.

16 ~~[K.]~~ L. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and
17 request for hearing, the court shall promptly give notice of the date and time of the hearing to the
18 judgment creditor, garnishee, and the judgment debtor. The judgment creditor shall serve a copy
19 of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

20 ~~[L.]~~ M. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days
21 after the filing of a notice of dispute and request for hearing. At the hearing, the court must
22 determine the merits of the dispute unless the court postpones decision pending ~~[such]~~ any
23 discovery as may be required to determine the status of the property.

1 ~~[M.]~~ N. Judgment on writ of garnishment. If a notice of dispute and request for hearing
2 is filed under this rule, judgment on the writ of garnishment shall not enter until a hearing has been
3 held on the dispute. If the court finds that the property is not exempt from garnishment, the court
4 shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the
5 judgment creditor the property or amount of money set forth in the judgment. Interest shall
6 continue to accrue on the judgment until the date the judgment is satisfied.

7 ~~[N.]~~ O. Form of writs, notices, and claim of exemptions. Applications for writs of
8 garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices
9 of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in
10 the form approved by the Supreme Court.

11 [As adopted, effective January 1, 1996; as amended by Supreme Court Order No. 08-8300-046,
12 effective December 31, 2008; as amended by Supreme Court Order No. 14-8300-019, effective
13 for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order
14 No. S-1-RCR-2024-00107, effective for all cases pending or filed on or after December 31, 2024;
15 as amended by Supreme Court Order No. S-1-RCR-2025-00174, effective for all cases pending or
16 filed on or after December 31, 2025.]

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18 **Committee commentary.** — Applications for writs of garnishment or execution are timely
19 if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978,
20 Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years
21 from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2
22 (2021).

- 1 [Adopted by Supreme Court Order No. S-1-RCR-2024-00107, effective for all cases pending or
- 2 filed on or after December 31, 2024.]